

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Belen Acevedo,

Plaintiff,

v.

Daniel Czerny Guajardo, in
individual and representative
capacity as trustee of The Daniel and
Rebeca Rosenberg Heirs' Trust,
dated December 15, 2003; and Does
1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Belen Acevedo complains of Daniel Czerny Guajardo, in individual and representative capacity as trustee of The Daniel and Rebeca Rosenberg Heirs' Trust, dated December 15, 2003; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. She suffers from multiple sclerosis. She uses a walker and a scooter for mobility.

1 2. Defendant Daniel Czerny Guajardo, in individual and representative
2 capacity as trustee of The Daniel and Rebeca Rosenberg Heirs' Trust, dated
3 December 15, 2003, owned the real property located at or about 275 S. Euclid
4 Street, Anaheim, California, in June 2018.

5 3. Defendant Daniel Czerny Guajardo, in individual and representative
6 capacity as trustee of The Daniel and Rebeca Rosenberg Heirs' Trust, dated
7 December 15, 2003, owns the real property located at or about 275 S. Euclid
8 Street, Anaheim, California, currently.

9 4. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their
11 relative responsibilities in causing the access violations herein complained of,
12 and alleges a joint venture and common enterprise by all such Defendants.
13 Plaintiff is informed and believes that each of the Defendants herein,
14 including Does 1 through 10, inclusive, is responsible in some capacity for the
15 events herein alleged, or is a necessary party for obtaining appropriate relief.
16 Plaintiff will seek leave to amend when the true names, capacities,
17 connections, and responsibilities of the Defendants and Does 1 through 10,
18 inclusive, are ascertained.

19
20 **JURISDICTION & VENUE:**

21 5. This Court has subject matter jurisdiction over this action pursuant to
22 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 6. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California's Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.

3
4 **FACTUAL ALLEGATIONS:**

5 8. Plaintiff went to the property to shop at ALDI ("Store") in June 2018.

6 9. The Store is a facility open to the public, a place of public
7 accommodation, and a business establishment.

8 10. Parking spaces are one of the facilities, privileges, and advantages
9 offered by Defendants to patrons of the Store.

10 11. Unfortunately, although parking spaces were one of the facilities
11 specifically reserved for patrons, there were no compliant, accessible handicap
12 parking spaces available for persons with disabilities in front of the Store that
13 complied with the Americans with Disability Act Accessibility Guidelines
14 during plaintiff's visit.

15 12. There was a parking stall ostensibly reserved for persons with
16 disabilities in front of the Store, but there was no access aisle that accompanied
17 the parking stall. There was also no ADA signage in front of the stall. There was
18 an International Symbol of Accessibility logo in the stall and there were blue
19 painted lines that surrounded the parking stall, however.

20 13. Additionally, the space to the left of the parking stall was not accessible
21 to plaintiff because there were poles staggered throughout the space. As a
22 result, the space between plaintiff's vehicle and the pole closest to the vehicle
23 was too narrow. In fact, the clear width space narrowed to about 2 feet. This
24 was not accessible for plaintiff.

25 14. Plaintiff ultimately did use the inaccessible parking stall and then
26 traveled behind parked cars and in the vehicular drive path with other vehicles,
27 which was dangerous.

28 15. Paths of travel are one of the facilities, privileges, and advantages

1 offered by Defendants to patrons of the Store.

2 16. The walkway leading to the entrance of the Store had cross slopes of as
3 much as 3%.

4 17. Currently, the walkway leading to the entrance of the Store has cross
5 slopes of as much as 3%.

6 18. Defendants have failed to maintain in operable working condition those
7 features of facilities and equipment that are required to be readily accessible to
8 and usable by persons with disabilities at the Subject Property.

9 19. Plaintiff personally encountered these barriers.

10 20. This inaccessible facility denied the plaintiff full and equal access and
11 caused her difficulty, discomfort, and embarrassment.

12 21. Plaintiff plans to return and patronize the Store but is deterred from
13 visiting until the defendants remove the barriers.

14 22. The defendants have failed to maintain in working and useable
15 conditions those features required to provide ready access to persons with
16 disabilities.

17 23. The barriers identified above are easily removed without much
18 difficulty or expense. They are the types of barriers identified by the
19 Department of Justice as presumably readily achievable to remove and, in fact,
20 these barriers are readily achievable to remove. Moreover, there are numerous
21 alternative accommodations that could be made to provide a greater level of
22 access if complete removal were not achievable.

23 24. For example, there are numerous paint/stripe companies that will come
24 and stripe an accessible parking stall and access aisle in front of the Store and
25 install proper signage on rapid notice, with very modest expense, sometimes
26 as low as \$300 in full compliance with federal and state access standards

27 25. Plaintiff is deterred from returning and patronizing the Store because of
28 her knowledge of the barriers that exist. Plaintiff will, nonetheless, return to

1 assess ongoing compliance with the ADA and will return to patronize the Store
2 as a customer once the barriers are removed.

3 26. Given the obvious and blatant nature of the barriers and violations
4 alleged herein, the plaintiff alleges, on information and belief, that there are
5 other violations and barriers on the site that relate to her disability. Plaintiff
6 will amend the complaint, to provide proper notice regarding the scope of this
7 lawsuit, once she conducts a site inspection. However, please be on notice that
8 the plaintiff seeks to have all barriers related to her disability remedied. See
9 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
10 encounters one barrier at a site, she can sue to have all barriers that relate to
11 her disability removed regardless of whether she personally encountered
12 them).

13
14 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
15 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all
16 defendants (42 U.S.C. section 12101, et seq.)

17 27. Plaintiff repleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint.

20 28. Under the ADA, it is an act of discrimination to fail to ensure that the
21 privileges, advantages, accommodations, facilities, goods and services of any
22 place of public accommodation is offered on a full and equal basis by anyone
23 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
24 § 12182(a). Discrimination is defined, inter alia, as follows:

- 25 a. A failure to make reasonable modifications in policies, practices,
26 or procedures, when such modifications are necessary to afford
27 goods, services, facilities, privileges, advantages, or
28 accommodations to individuals with disabilities, unless the

1 accommodation would work a fundamental alteration of those
2 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 b. A failure to remove architectural barriers where such removal is
4 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
5 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
6 Appendix “D.”

7 c. A failure to make alterations in such a manner that, to the
8 maximum extent feasible, the altered portions of the facility are
9 readily accessible to and usable by individuals with disabilities,
10 including individuals who use wheelchairs or to ensure that, to the
11 maximum extent feasible, the path of travel to the altered area and
12 the bathrooms, telephones, and drinking fountains serving the
13 altered area, are readily accessible to and usable by individuals
14 with disabilities. 42 U.S.C. § 12183(a)(2).

15 29. Any business that provides parking spaces must provide accessible
16 parking spaces. 2010 Standards § 208. To qualify as a reserved handicap
17 parking space, the space must be properly marked and designated. Under the
18 ADA, the method, color of marking, and length of the parking space are to be
19 addressed by State or local laws or regulations. See 36 C.F.R., Part 1191, §
20 502.3.3. Under the California Building Code, to properly and effectively
21 reserve a parking space for persons with disabilities, each parking space must
22 be at least 216 inches in length. CBC § 11B-502.2 Under the California
23 Building Code, to properly and effectively reserve a parking space for persons
24 with disabilities, each such space must be identified with a reflectorized sign
25 permanently posted adjacent to and visible from each stall or space. CBC §
26 1129B.4. The sign must consist of the International Symbol of Accessibility
27 (♿) in white on a blue background. Id. It cannot be smaller than 70 square
28 inches and must be mounted so that there is a minimum of 80 inches from the

1 bottom of the sign to the parking space. Id. Signs must be posted so that they
2 cannot be obscured by a vehicle parking in the space. Id. An additional sign or
3 additional language below the symbol of accessibility must state, “Minimum
4 Fine \$250” to ensure that the space remains available for persons with
5 disabilities. Id. Another sign must be posted in a conspicuous place at the
6 entrance to the parking lot or immediately adjacent to each handicap parking
7 space, with lettering 1 inch in height, that clearly and conspicuously warn that
8 unauthorized vehicles parking in the handicap parking spaces can be towed at
9 the owner’s expense. Id. Additionally, the surface of the handicap parking stall
10 must have a profile view of a wheelchair occupant (♿) that is 36 inches by 36
11 inches. Id. And the surface of the access aisle must have a blue border. CBC §
12 1129B.3. The words “NO PARKING” in letters at least a foot high must be
13 painted on the access aisle. Id.

14 30. Unfortunately, there are no accessible parking spaces in front of the
15 Store.

16 31. Under the ADA, there must be at least one accessible route connecting
17 every building on the same site. 2010 Standards § 206.2.2. Travel in the
18 vehicular drive path with vehicles is not part of an accessible route.

19 32. According to the California Building Code, it is not permissible to locate
20 handicap-accessible parking stalls in locations where a person with disability
21 is compelled to wheel or walk behind parked cars other than their own. CBC
22 1129B.3.3.

23 33. Here, the failure to provide an accessible route is a violation of the law.

24 34. Nowhere shall the cross slope of an accessible route exceed 2.1%. 2010
25 Standards § 403.3.

26 35. Here, the slopes along the walkways exceeded the levels allowed by law.

27 36. The Safe Harbor provisions of the 2010 Standards are not applicable
28 here because the conditions challenged in this lawsuit do not comply with the

1 1991 Standards.

2 37. A public accommodation must maintain in operable working condition
3 those features of its facilities and equipment that are required to be readily
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 38. Here, the failure to ensure that the accessible facilities were available
6 and ready to be used by the plaintiff is a violation of the law.

7 39. Given its location and options, plaintiff will continue to desire to
8 patronize the Store but she has been and will continue to be discriminated
9 against due to the lack of accessible facilities and, therefore, seeks injunctive
10 relief to remove the barriers.

11
12 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
13 **RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ §
14 51-53)

15 40. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
18 that persons with disabilities are entitled to full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishment of
20 every kind whatsoever within the jurisdiction of the State of California. Cal.
21 Civ. Code §51(b).

22 41. The Unruh Act provides that a violation of the ADA is a violation of the
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 42. Defendants’ acts and omissions, as herein alleged, have violated the
25 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
26 rights to full and equal use of the accommodations, advantages, facilities,
27 privileges, or services offered.

28 43. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
3 (c).)

4
5 **PRAYER:**

6 Wherefore, Plaintiff prays that this Court award damages and provide
7 relief as follows:

8 1. For injunctive relief, compelling Defendants to comply with the
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
10 plaintiff is not invoking section 55 of the California Civil Code and is not
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. Damages under the Unruh Civil Rights Act, which provides for actual
13 damages and a statutory minimum of \$4,000.

14 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
15 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16
17 Dated: November 1, 2018

CENTER FOR DISABILITY ACCESS

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19
20 By:



21 _____
22 Chris Carson, Esq.
23 Attorney for plaintiff
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